

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

CRL.A.No. 280 of 2000()

CC.17/1998 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR
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APPELLANT:

T.N. SUKUMARAN NARAYANAN,
S/O. NARAYANAN,
FORMER VILLAGE ASSISTANT,
ETTUMANOOR VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.RAJEEV
SRI.P.M.RAFIQ

RESPONDENTS:

STATE OF KERALA, REP.
BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
(VC 1/98 OF VACB KOTTAYAM,
DY.S.P. VACB, KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.P.RAVEENDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.280 OF 2000-A

Dated this the 10th day of April, 2007.

JUDGMENT

The appellant, the sole accused in C.C.No.17/1998 on the file of the Enquiry Commissioner and Special Judge, Thrissur, faced trial for the offences punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988.

2. The prosecution case against the appellant is as follows:

While the appellant was working as a Village Assistant at Ettumannur Village Office, he demanded an amount of Rs.150/= as illegal gratification from PW2 for issuing mutation certificates to the property belongs to PW2 and her brothers and sister and accepted the said amount on 14.1.1998. Being a public servant, the appellant committed the offence as stated above. To prove the case against the appellant, prosecution examined Pws 1 to 9 and produced Exts. P1 to P18. MOs 1 to 4 were also produced. On closing the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure. The appellant denied the prosecution allegation and stated that he had received an amount of Rs.150/= on

14.1.1998 from PW2 not as bribe or illegal gratification but as balance of the fee which he remitted from his own pocket for PW2 and others on 19.12.1997 as per Ext.P6 receipt. The appellant had further stated that the case set up was due to enmity kept by the D.Y.F.I people of the locality and he is innocent of the allegations. To prove the case, the appellant examined DW1 and also relied on Exts. D1 and D2. However, relying on the evidence adduced by the prosecution, the trial court found the appellant guilty of the offences punishable under Sections 7 and 13 (1)(d) read with Section 13 (2) of the Act and he was convicted thereunder and sentenced to undergo R.I for three years and to pay a fine of Rs.25,000/= with default sentence of payment of fine, a further period of S.I for one year under Section 7 of the P.C.Act and to undergo R.I for four years under Section 13(1) (d) read with Section 13(2) of the P.C.Act. The trial court also ordered that the substantive sentences of imprisonment shall run concurrently. The benefit under Section 428 of Cr.P.C was also allowed. The above judgment of the trial court is assailed in this appeal.

3. Heard the learned counsel Sri.Vijayabhanu appearing for the appellant as well as the Public Prosecutor appearing for the State.

The learned counsel for the appellant submits that the trial court ought not have believed the evidence of PW2 with regard to the demand alleged to have been made by the appellant as the evidence of PW2 was not corroborated by any independent evidence. Further the counsel submits that the trial court ought to have found that the evidence of PW3 and PW8 is not enough to find the appellant had committed the offences as alleged by the prosecution. The counsel further submits that the trial court ought to have found that the case set up by the appellant in his Section 313 statement is acceptable and that the amount received by him was part of the fee remitted for the purpose of issuing mutation certificates to the property of PW2 and her brothers and sister. Finally the counsel submits that the trial court ought to have seen that the alleged recovery made by PW8 as per Ext.P9 mahazar is not proved legally to find that the appellant had accepted Rs.150/= as bribe from PW2 as alleged by the prosecution.

4. To prove the case against the appellant, the prosecution relied on the evidence of Pws 2, 3 and 8 out of whom PW2 is the daughter of one Chellamma, who had divided her property by settlement deeds in favour of PW2, her sisters and her brother. After the

settlement effected, PW2 and her mother Chellamma had filed applications before the Village Officer for mutation of the names along with the documents and according to PW2 an amount of Rs.240/= has been already remitted on 19.12.1997 for that purpose. Even after the remittance of that amount, mutation certificates were not issued from the village office. Further this witness has stated that the appellant is the officer who was to issue the mutation certificates for which applications, Exts.P2 to P5, have already been filed. Even after the payment of the required fee, the certificates have not been given to PW2. Therefore, she went to the village office several days and finally on 8.1.1998. According to her, on 8.1.1998 the appellant demanded an amount of Rs.150/= as bribe in order to issue the mutation certificates as per the applications filed by PW2 and her relatives. As PW2 was not willing to pay the bribe as asked by the appellant, she had gone to the office of PW8 on 13.1.1998 and informed the matter to PW8, the Inspector attached to the Vigilance and Anti Corruption Bureau, Kottayam. According to this witness, PW8- the Inspector, Vigilance and Anti corruption Bureau directed her to bring an amount of Rs.150/= on the next day. Accordingly, she had produced Rs.150/= before PW8 as one hundred rupee note and one fifty rupee note. This witness has further stated that when

she went to the office of PW8 on 14.1.1998 both PW3 and CW2 were also present in the office and in the presence of these officers PW8 had explained the result of the phenolphthalein test and thereafter PW8 poured the powder on the currency notes which PW2 had brought to the office of PW8. Further this witness has stated that after pouring the powder on the notes and after marking the notes, PW8 prepared Ext.P8 mahazar and the notes brought to the office of PW8 were returned to PW2 and directed her to go to the office of the appellant. Thereafter PW3, PW8 and other officers followed her and PW2 reached at the office of the appellant. He was available in the office. Further this witness has stated that when she met the appellant on 14.1.1998 he asked whether she had brought the amount as demanded by him. According to her, she paid the amount to the appellant which he put in the drawer of the table of the appellant and thereafter as agreed early and as directed by PW8, PW2 had signaled the officers, who were waiting outside the office of the appellant and thereafter PW8, PW3 and other officials entered into the office of the appellant. PW3 is one of the trap witnesses arranged by PW8 who had given evidence to the effect that on 14.1.1998 PW2 was in the office of PW8 and in the presence of PW8 the complaint given by PW2 was read over to him and other

witnesses. This witness further has stated that PW2 had brought an amount of Rs.150/= and in the presence of PW2 and other witnesses phenolphthalein test was explained and phenolphthalein power was poured on the currency notes brought by PW2. This witness has further stated that after pouring of the phenolphthalein powder on the currency notes by PW2, the notes were marked and the numbers were entered in Ext.P8 mahazar and thereafter as directed by PW8, PW3 accompanied PW2 in an auto rickshaw and PW2 was alighted at the office of the appellant and he was waiting outside the office. According to him, after some time PW2 had signaled and thereafter PW8, himself and other witnesses entered into the office of the appellant and PW8 asked the appellant where the amounts which he received from PW2. This witness has further stated that to the question put by PW8 regarding the currency notes received from PW2, the appellant has stated that he had received the amount and the amount is in the drawer of the table. Further this witness has stated that on the direction issued by PW8, he himself had took the notes from the table of the appellant and thereafter phenolphthalein powder test was conducted on the notes and also on the hands of the appellant and on preparing Ext.P9 mahazar the tainted currency notes were recovered and after

completing the mahazar prepared by PW8, the appellant was arrested at the office. The evidence of this witness with regard to the action followed by PW8 in the office of the appellant has been spoken to by PW8, the officer who recovered the amount as per Ext.P9. PW4 is a co-worker of the appellant, who had given evidence before the court that he came to the office only after the preparation of Ext.P9 seizure mahazar. PW5 is the Village Officer during the relevant time, who had given evidence before the court that as per Exts.P2 to P5 applications, PW2 and her sisters, mother and brother have given applications for mutation certificates. This witness has further stated that as per Ext.P16, an amount of Rs.240/= (Rs.40/= as sub divisional charge and Rs.200/= as the charge for mutation certificates) has already been collected from PW2 and the other applicants for issuing the required mutation certificates. Further this witness has stated that the amount collected by the appellant was in the form of mutation charges and it is the practice of the office that the amount collected by the Village Assistant would be remitted to the taluk office within fifteen days of the collection. PW6 is the part time sweeper of the office of the appellant. She was examined to prove that when PW2 went to the office of the appellant she was also present and she had seen that PW2 paid the amount to

the appellant. But this witness turned hostile and has stated that she had heard the conversion of PW2 with the appellant and they were talking about the fee already remitted for the purpose of issuing mutation certificates. PW7 is another Village Assistant, who was examined to prove the practice followed in the office regarding receipt of the fees and issuance of the certificates. This witness has stated that some times applicants may not be in a position to pay the entire required fee and such times receipts will be issued on condition that the balance amount will be paid later. PW8 is the Investigating Officer, who had recorded Ext.P7 statement from PW2 and also prepared Ext.P8 entrustment mahazar and Ext.P9 recovery mahazar. This witness has further stated that he had recovered Ext.P6 receipt and other files relating to the applications of PW2 and her relatives. This witness also has stated that when PW2 had given the signal of accepting the amount by the appellant, himself, PW3 and other officials entered into the office of the appellant and thereafter tainted marked currency notes were recovered from the table of the appellant and he had prepared Ext.P9 recovery mahazar in the presence of PW3 and the other witnesses. PW9 is the Dy.S.P of Vigilance and Anti Corruption Bureau, Kottayam, who had given evidence before the court that PW8 had conducted the investigation

and he is competent to conduct investigation of the case also. This witness has further stated that he had questioned some of the witnesses including CW10, the mother of PW2. This witness has further stated that the sanction order issued by PW1, the District Collector, was also produced before the court by him for prosecuting the appellant for the offence punishable under the provisions of the P.C.Act. The trial court had considered the evidence adduced by the prosecution and found that the prosecution had succeeded in proving that the amount of Rs.150/= has been recovered from the table of the appellant on 14.1.1998 as per Ext.P9 mahazar.

5. The question to be decided in this appeal in the light of the contentions raised by the learned counsel appearing for the appellant is that whether the judgment of the trial court is sustainable in law or not. The prosecution case is that Exts.P2 to P5 applications were filed by PW2 and her relatives for getting mutation certificates of their property and they have paid the required fee on 19.12.1997. Even after the payment of that fee and after the lapse of more than one month, they did not get the required mutation certificates. Therefore, PW2 went to the office of the appellant for several times and lastly on 8.1.1998. On 8.1.1998 the appellant had demanded an

amount of Rs.150/= as bribe for issuing the required mutation certificates. . Aggrieved by the demand so made by the appellant, PW2 filed complaint before PW8 and thereafter a trap has been conducted as alleged by the prosecution. The evidence of PW2 with regard to the demand made by the appellant on 8.1.1998 was not corroborated by any independent evidence or not spoken to by any of the official witnesses, who were already examined by the prosecution, that the appellant had demanded the bribe as stated by PW2 on 8.1.1998. That apart PW2 had given evidence before the court that she was not remembering the date on which the appellant had demanded the bribe though in Ext.P7 her case was that the appellant demanded the amount on 8.1.1998. With regard to the demand, there is no evidence other than that of PW2. In this context, the contention of the learned Public Prosecutor appearing for the respondent is that evidence of Pws 3 and 8 is there to support the version of PW2 with regard to the demand alleged to have been made by the appellant. But, as per the evidence given by Pws 3 and 8 the demand made by the appellant is spoken to only by PW2 and there is no evidence adduced by PW8 that the allegation contained in Ext.P7 complaint that the appellant made a demand on 8.1.1998 is not seen verified by PW8 or had adduced any evidence

to show that demand is there by the appellant as alleged by the prosecution. With regard to the evidence of PW2 in respect of the alleged payment of Rs.150/= to the appellant on 14.1.1998 the prosecution tried to corroborate with the evidence of PW3, who is none other than one of the trap witnesses arranged by PW8 but the evidence of PW3 would not show that he had either seen PW2 paying the amount to the appellant or any demand has been made by the appellant on 14.1.1998 as stated by PW2. In this context, the evidence of PW3 would show that from the office of PW8 both PW2 and PW3 went to the office of the appellant in an auto rickshaw and PW2 was alighted at the office of the appellant and PW3 waited at the bus stop and only after getting the signal from PW2, PW3 and other witnesses entered into the office of the appellant. If so, it is not possible to see any of the transactions taken place in the office of the appellant and the demand, if any, made by the appellant to PW2. In the above circumstances, finding of the trial court that the demand is proved is not justified. In this context, the judgment of the Apex Court reported in **Ram Praksh Arora v. State of Panjab** (1972 (3) SCC 652) is relevant. In the above judgment, the Apex Court had held that the evidence of trap witnesses who are interested in trapping the accused must be tested like other interested witnesses

and in such case the court may look for independent corroboration before convicting an accused. In the light of the case set up by the appellant in his Section 313 statement that he received the amount of Rs.150/= from PW2 as part of the fee and not as any bribe as alleged by the prosecution has to be considered in the above background. Even though this Court is not accepting the explanation offered by the appellant for the acceptance of the amount, the evidence of PW2 alone is not enough to prove that the appellant had demanded any bribe as alleged by the prosecution. Hence, the finding of the trial court that the appellant had demanded the bribe as alleged by the prosecution is not sustainable. The prosecution case against the appellant is that PW2 and her mother went to the office of the appellant on 19.12.1997 and filed an application for remitting the required court fee of Rs.240/= as evidenced from Ext.P6 receipt and even after the payment of the required fee, the mutation certificates have not been given and the appellant was insisting and demanding for the bribe or illegal gratification to issue the certificates. It is evidenced from the records seized by PW8 especially Ext.P13 series and Ext.P14 series would show that the applications filed by PW2 and others were scrutinized and the relevant fee remitted has already been

accounted in the day book and also in the office of the Tahsildar. This would show that the appellant was kept the file without issuing the certificates. It is also come out in evidence that the files were already sent to the office of the Tahsildar and after having the remarks and verification, the files were returned to the office of the appellant and files were ready for issuance of the required certificates. If so, the demand of the appellant for any bribe is doubtful and from the evidence of PWs 4 and 5 it is clear that the appellant was dealing with the files relating to the certificates and PW2 might have met him in the office. But, that circumstance alone will not lead to a conclusion that the appellant demanded the bribe as alleged by the prosecution. In the above circumstances, the prosecution actually failed to prove the demand by adducing independent corroborative evidence. Hence, the finding of the trial court that the appellant had committed the offence punishable under Section 13(1)(d) read with Section 13 (2) is not sustainable and there is no evidence to convict him under that section. Accordingly, the conviction and sentence entered against the appellant under Section 13 (1)(d) read with Section 13 (2) are hereby set aside.

6. The next facts to be considered in this appeal are that as per

Ext.P9 entrustment mahazar PW2 had produced Rs.150/= before PW8 and on marking the notes and on recording the numbers of the notes in the presence of PW3 and other officials, phenolphthalein powder was poured on the currency notes and thereafter currency notes were given back to PW2 and directed her to go to the office of the appellant and pay the same, if the appellant demands the amount. The evidence of PW8 with regard to the receipt, gratification or acceptance of the amount paid by PW2 is spoken to by PW3 also. PW3 is one of the witnesses arranged by PW8 before whom PW8 had explained the content of the complaint - Ext.P7 filed by PW2, who had also given evidence before the court that he was present in the office of PW8 on 14.1.1998 and the currency notes brought by PW2 were marked and phenolphthalein powder was poured on the notes and thereafter the same was entrusted to PW2 to give to the appellant. The evidence of Pws 2, 3 and 8 would show that on 14.1.1998 Pws 2, 3, 8 and other officials were gone to the office of the appellant and Pws 2 and 3 were in an auto rickshaw. From the auto rickshaw, PW2 alighted at the office of the appellant and she entered into the office of the appellant and thereafter she came out of the office and signaled as directed by PW8 and thereafter immediately PW3, PW8 and other officials entered into the office of

the appellant. PW8 asked the appellant where the amount which he received from PW2. The appellant had admitted that he had received the amount from PW2 but, the explanation offered was that the amount was received as part of the fee paid by him on 19.12.1997 and not as bribe as stated by PW2. In Ext.P8, the number and other particulars of the notes were already recorded by PW8 in the presence of PW3 and other witnesses. The appellant had told that the amount which he received from PW2 was in the drawer of the table and as per the direction given by PW8, PW3 had taken the currency notes of Rs.150/= from the table of the appellant. PW8 had verified the number and other markings made by him on 14.1.1997 and some other currency notes have been recovered from the table of the appellant. Though in Ext.P9 it is recorded that the appellant had stated that the amount received was kept in the drawer of the table, nowhere it is stated in Ext.P9 that the appellant had received the amount as bribe but stated as part of the fee. But the case suggested to Pws 2, 3 and 8 is that the appellant had offered an explanation at the time of preparation of Ext.P9 itself to the effect that the amount so received was part of the fee which he paid for and on behalf of PW2 and her mother and other applicants. It is a fact that the tainted currency notes have been recovered from the table of

the appellant and the recovery is spoken to by PW3 and PW8. If so, the question is that whether the explanation given by the appellant is acceptable or not. In this context, the learned counsel appearing for the appellant had taken two contentions for disproving the prosecution case that the amount accepted by him as bribe. Firstly it is contended that when CW10 the mother of PW2 was questioned by PW9, she had stated that the required fee has been paid but this witness was not examined. The other contention is that though PW2 had stated in Ext.P7 complaint that the appellant had demanded the bribe on 8.1.1998 but she waited up to 13.1.1998 to give a complaint before PW8 for which either PW2 or any other prosecution witness has offered any explanation for the delay. But non-explanation on the part of PW2 for the delay from 8.1.1998 to 13.1.1998 is not a reason to discard the evidence of PW3 and PW8 regarding recovery of the tainted currency notes from the table of the appellant. Further contention of the learned counsel for the appellant is that the explanation offered by the appellant is correct as Ext.P6 would show that the same was kept in the office till 14.1.1998 as the balance amount which he paid from his pocket has not been given by the applicants. But, from this circumstance alone this Court is not in a position to hold that the explanation offered by

the appellant for the recovery of the amount is acceptable. That apart, as per the presumption available to the prosecution under Section 20 of the P.C.Act, it is the duty of the appellant to rebut the presumption by proving the contradictory facts if any to show that the amount recovered from the table of the appellant is not as bribe as alleged by the prosecution but as otherwise. The only circumstance, now alleged or explained by the appellant is that keeping of Ext.P6 in Ext.P14 file. But that by itself is not a reason to discard the evidence that the tainted currency notes were recovered from the table of the appellant. Applying the presumption available under Section 20 of the P.C.Act this Court is of the view that there is ample evidence to show that the appellant had received the amount of Rs.150/= from PW2 as bribe as contemplated under Section 7 of the P.C.Act.

7. In the above circumstances, the findings entered by the trial court against the appellant under Section 7 require no interference by this Court. The conviction entered by the trial court against the appellant under Section 7 of the P.C. Act is confirmed. The next question to be considered in this appeal is with regard to the sentence to be awarded against the appellant under Section 7 of the P.C.Act.

The trial court had stated reasons for imposing R.I for three years against the appellant. This Court has already found that the prosecution had failed to prove the demand made by the appellant for bribe as alleged by the prosecution so as to attract the offence under Section 13 (1) (d) read with Section 13 (2). On considering the entire facts and circumstances of the case, awarding a sentence of R.I for one year and a fine of Rs.15,000/= with default of payment of fine S.I. for six months will meet the ends of justice against the appellant.

Ordered accordingly. The bail bond executed by the appellant shall stand canceled. The appeal is partly allowed.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.280 OF 2000

JUDGMENT

10th April, 2007.